

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communication Commission's
Sixth Report and Order and Eleventh
Order of Reconsideration in the Matter
of Sections of the Cable Television
Consumer Protection Act of 1992(sic):
Rate Regulation

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: 92-266 and 93-215
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: FCC 95-196
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OPPOSITION TO PETITION FOR RECONSIDERATION

Service Electric Cable TV of Hunterdon, Inc., ("SECH") by its attorney, hereby submits its Opposition to the Petition for Reconsideration ("Petition") submitted by the New Jersey Board of Public Utilities ("Board"), to the Federal Communications Commission ("Commission"), which Petition was submitted pursuant to 47 C.F.R. §1.429 on or about August 11, 1995.

The Commission's actions in adopting the rule and issuing the order are appropriate and in the public interest.

When analyzed the entire thrust of the Board's argument is that the Commission's action in issuing its order and rules is that it is specifically and wrongfully depriving the Board of something that it believes it should have. The Board does not need what it seeks. The Commission's actions save the burden that the Board seeks to impose on small systems. A review of some of the language of the Board's petition shows that it looks at the subject at hand from a perspective that has been harmful to small systems and would continue to harm such systems if the relief sought was granted.

The Board says that SECH will have an "unfair advantage" in setting rates. That SECH could charge \$74.40 per month to its subscribers. The rule creates "an unprecedented shift in the burden of proof". The Board expresses great upset in that "the franchising authority should only make reasonable discovery requests". Applying the rule to SECH is characterized by the Board as "an example of the problem". The Board is concerned that it "will be difficult if not impossible to challenge" information submitted pursuant to the rule. It further says that it will be "forced to carry the burden". The rule will

"necessitate...expert testimony establishing why Form 1230 derives an unreasonable rate..." "[T]he Commission discourages...discovery...which calls for a detailed explanation..." The Board will "have to commit...resources...to carry its burden..."¹. The ability to ascertain costs will be "severely constrained". "Unfair" after expending resources in the case.

The attitude of the Board is clear. The Board wants to control rates. It wants to continue to exercise absolute authority without regard to that which is reasonable or unreasonable. It wants to create a mountain where none need exist.

A review of the rate case that the Board uses as an example should be helpful to the Commission in deciding to deny the relief sought by the Board.

SECH filed the required FCC forms more than one year ago. Since that time, the Office of Cable Television of the Board of Public Utilities and the Division of Ratepayer Advocate have asked more than 100 discovery requests that required more than 450 pages of detailed responses from SECH. Discovery requests were made over a period of four months.

Three months passed between the time SECH filed its FCC forms with the Board and the time that the Board transmitted the case to the Office of Administrative Law("OAL")². The first public hearing on the case took place five months after the case was transmitted to the OAL.

Nine months after the FCC forms were filed with the Board a tentative settlement was reached. The settlement agreed upon the rate that SECH had proposed in its filing (not the amount alleged by the Board in the Petition). Approximately one month after the tentative settlement the Deputy Attorney General assigned to the matter forwarded a draft of a proposed stipulation of settlement. Two weeks thereafter SECH forwarded its comments on the draft stipulation to the Board. Two months thereafter the comments of the staff of the Board on SECH suggested language were forwarded to SECH. Several weeks prior to those comments the FCC issued the Sixth Report and Order and Eleventh Order on Reconsideration. Substantive discussions on the draft stipulation then ceased.

¹ This would appear to be at odds with the certification requirements concerning availability of adequate resources that the Board submitted to the Commission to receive rate regulation authority.

² The New Jersey agency that conducts fact finding hearings at the request of administrative agencies, which includes the Board.

If the Commission's order and rule had been adopted sooner, thousands of dollars would have been saved by both the Board and the company. The results would have likely been the same, but without the waste that had been associated with the more complex rules that are better suited to systems that are not small.

The Board would have the Commission believe that there was a settlement between SECH and the Board. That is not accurate. The settlement would have been subject to the Board's approval. If it did not approve it, the process would have had to start over at some point. The Board was not a party to the settlement discussions. Additionally, there were matters in the draft stipulation that had never been discussed by SECH or the Board staff.

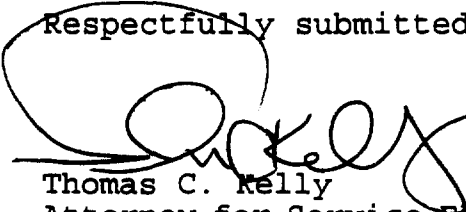
The Commission action was most appropriate as evidenced by the administrative nightmare that this 3000 subscriber system was put through and would again have to face if the matter raised by the Board was reconsidered. The Board seeks to be involved in the micro management and control of small system rates where the Commission has wisely separated franchising authorities from small systems. The cost to subscribers will be directly related to the cost of service, not the administrative burden that would be placed on them by continuing the "rate control" sought by the Board.

The Commission has established a procedure that is reasonable. The Board does not have the obligation to dissect and analyze every cost item presented. It does not have to have the small system develop data that serves no significant purpose. It does not have to hire experts and expend resources that only increase the cost of government and the cost of cable service. The mechanism established by the Commission cuts through to the reasonableness of the rate through a simple formula. The Board already has all the financial and technical information on hand because of its ongoing regulatory reporting requirements imposed on all operators in New Jersey. There is no need for additional discovery. There is no need to create the mountain of bureaucracy sought by the Board when the simplified small system rules are more than adequate to protect the public interest.

CONCLUSION

The Board's arguments for relief are without merit and should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Kelly', is written over the typed name.

Thomas C. Kelly
Attorney for Service Electric Cable
TV of Hunterdon, Inc.

Dated *August 17, 1995*

Law Office of Thomas C. Kelly
175 Fairfield Avenue, Unit 1C
P.O. Box 1558
West Caldwell, N.J. 07006
Telephone (201) 403 1661
Facsimile (201) 403 9523